

103^D CONGRESS
2^D SESSION

H. R. 4894

To prohibit unauthorized fixation of sound recordings and music videos of live musical performances and provide copyright protection in restored works, and for certain other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 3, 1994

Mr. HUGHES introduced the following bill; which was referred to the
Committee on the Judiciary

A BILL

To prohibit unauthorized fixation of sound recordings and music videos of live musical performances and provide copyright protection in restored works, and for certain other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “General Agreement
5 on Tariffs and Trade Copyright Act of 1994”.

6 **SEC. 2. RENTAL RIGHTS IN COMPUTER PROGRAMS.**

7 Section 804(c) of Public Law 101–650, 104 Stat.
8 5136, is amended by striking the first sentence.

**TITLE I—FEDERAL ANTI-
BOOTLEG PROVISIONS**

SEC. 101. SHORT TITLE.

This title may be cited as the “Federal Anti-Bootleg Act of 1994”.

**SEC. 102. UNAUTHORIZED FIXATION OF AND TRAFFICKING
IN SOUND RECORDINGS AND MUSIC VIDEOS
OF LIVE MUSICAL PERFORMANCES.**

Title 18, United States Code, is amended by adding the following:

**“§ 2319A. Unauthorized fixation of and trafficking in
sound recordings and music videos of
live musical performances**

“(a) Whoever, without the consent of a featured performer, knowingly and for purposes of commercial advantage or private financial gain—

“(1) fixes the sounds or sounds and images of a live musical performance in a copy or phonorecord, or reproduces phonorecords or copies of such a performance from an unauthorized fixation;

“(2) transmits or otherwise communicates to the public the sounds or sounds and images of a live musical performance; or

“(3) distributes or offers to distribute, sells or offers to sell, rents or offers to rent, or traffics any

1 copy or phonorecord fixed without the consent of a
2 featured performer, regardless of whether the fixa-
3 tions occurred in the United States;
4 shall, upon judgment of conviction, be fined not more than
5 \$250,000 or imprisoned for not more than 5 years, or
6 both.

7 “(b) When a person is convicted of a violation of sub-
8 section (a), the court shall in its judgment of conviction
9 order the forfeiture and destruction of any copies of
10 phonorecords created in violation thereof, as well as any
11 plates, molds, matrices, masters, tapes, and film negatives
12 by means of which such copies or phonorecords may be
13 made. The court may also, in its discretion, order the for-
14 feiture and destruction of any other equipment by means
15 of which such copies or phonorecords may be reproduced,
16 taking into account the nature, scope, and proportionality
17 of the use of the equipment in the offense.

18 “(c) If copies or phonorecords of sounds or sounds
19 and images of a live musical performance are fixed outside
20 of the United States without the consent of a featured
21 performer, such copies or phonorecords are subject to sei-
22 zure and forfeiture in the same manner as property im-
23 ported in violation of the customs revenue laws. The Sec-
24 retary of the Treasury and the United States Postal Serv-
25 ice shall, separately or jointly, make regulations for the

1 enforcement of the provisions of this subsection, including
2 regulations by which any featured performer may, upon
3 payment of a specified fee, be entitled to notification by
4 the United States Customs Service of the importation of
5 phonorecords or copies that appear to consist of unauthor-
6 ized fixations of the sounds or sounds and images of a
7 live musical performance.

8 “(d) As used in this section—

9 “(1) The terms ‘copy’, ‘fixed’, ‘musical work’,
10 ‘phonorecord’, ‘reproduce’, ‘sound recordings’, and
11 ‘transmit’ have the same meanings given such terms
12 in section 101 of title 17, United States Code.

13 “(2) The term ‘traffic’ means transport, trans-
14 fer, or otherwise dispose of, to another, as consider-
15 ation for anything of value, or make or obtain con-
16 trol of with intent to transport, transfer, or dispose
17 of.

18 “(e) This section shall apply to the following acts that
19 occur 1 year after the entry into force of the World Trade
20 Organization Agreement—

21 “(1) live musical performances fixed without
22 the consent of a featured performer;

23 “(2) distributions, offers to sell, sales, offers to
24 sell, rentals, offers to rent, or trafficking in any copy
25 or phonorecord fixed without the consent of a fea-

1 tured performer, regardless of when the fixation oc-
2 curred; and

3 “(3) transmissions or other communications to
4 the public of sounds or sounds and images of a live
5 musical performance fixed without consent of a fea-
6 tured performer.”.

7 **TITLE II—COPYRIGHT IN** 8 **RESTORED WORKS**

9 **SEC. 201. SHORT TITLE.**

10 This title may be cited as the “Berne and GATT
11 Retroactivity Act of 1994”.

12 **SEC. 202. RESTORED WORKS.**

13 (a) IN GENERAL.—Section 104A of title 17, United
14 States Code, is amended to read as follows:

15 **“SEC. 104A. COPYRIGHT IN RESTORED WORKS.**

16 “(a) AUTOMATIC PROTECTION AND TERM.—

17 “(1) TERM.—Copyright subsists, in accordance
18 with this section, in restored works, and vests auto-
19 matically on the date of restoration.

20 “(A) Copyright in restored works published
21 or registered with the Copyright Office before
22 January 1, 1978, shall endure for a term of 75
23 years from the date of first publication or reg-
24 istration as the case may be.

1 “(B) Copyright in works created on or
2 after January 1, 1978, shall endure for the
3 term of protection established in section 302.

4 “(2) EXCEPTION.—No work in which the copy-
5 right was ever owned or administered by the Alien
6 Property Custodian and in which the restored copy-
7 right would be owned by a government or instrumen-
8 tality thereof, shall be a restored work.

9 “(b) OWNERSHIP OF RESTORED COPYRIGHT.—A re-
10 stored work vests initially in the author of the work as
11 determined according to the law of its source country.

12 “(c) FILING OF NOTICE OF INTENT TO ENFORCE
13 RESTORED COPYRIGHT AGAINST RELIANCE PARTIES.—
14 Any person owning copyright in a restored work or an ex-
15 clusive right therein may file with the Copyright Office
16 a notice of intent to enforce that copyright against reliance
17 parties. Acceptance of a notice by the Copyright Office
18 shall not create a presumption of the validity of any of
19 the facts stated therein.

20 “(d) REMEDIES FOR INFRINGEMENT OF RESTORED
21 COPYRIGHTS.—

22 “(1) ENFORCEMENT OF COPYRIGHT IN RE-
23 STORED WORKS IN THE ABSENCE OF A RELIANCE
24 PARTY.—As against any party who is not a reliance
25 party, the remedies provided in chapter 5 of this

1 title shall be available immediately upon restoration
2 with respect to any infringing act commenced on or
3 after the date of restoration.

4 “(2) ENFORCEMENT OF COPYRIGHT IN RE-
5 STORED WORKS AS AGAINST RELIANCE PARTIES.—

6 As against a reliance party, subject to paragraph
7 (3), the remedies provided in chapter 5 of this title
8 shall be available upon restoration—

9 “(A)(i) if the owner of the restored work
10 files with the Copyright Office, between the
11 date of restoration and 24 months thereafter, a
12 notice of intent to enforce a restored work; and

13 “(ii) the act of infringement commenced on
14 or after 12 months from the date of publication
15 of the notice in the Federal Register;

16 “(B)(i) if the owner of the copyright in the
17 restored work or an exclusive right therein
18 serves upon that reliance party a notice of in-
19 tent to enforce a restored work; and

20 “(ii) the act of infringement commenced
21 prior to receipt of the notice;

22 “(C) if copies of a restored work are made
23 after publication of the notice of intent in the
24 Federal Register; or

1 “(D) in the case of a particular reliance
2 party, after receipt of a notice of intent to en-
3 force the restored work.

4 “(3) COMMENCEMENT OF INFRINGEMENT FOR
5 RELIANCE PARTIES.—For purposes of section 412,
6 in the case of reliance parties, infringement shall be
7 deemed to have commenced prior to registration
8 when acts which would have constituted infringe-
9 ment were committed prior to the date of the res-
10 toration and continued after such date.

11 “(e) NOTICES OF INTENT TO ENFORCE A RESTORED
12 COPYRIGHT.—

13 “(1) NOTICES OF INTENT FILED WITH THE
14 COPYRIGHT OFFICE.—(A)(i) Notices of intent filed
15 with the Copyright Office to enforce a restored work
16 shall be signed by the owner of the copyright or the
17 owner of the exclusive right filing the notice and
18 shall identify the title of the restored work. If the
19 notice is signed by an agent, the agency relationship
20 must have been constituted in a writing signed by
21 the owner of the restored work or the owner of the
22 exclusive right therein prior to the filing of the no-
23 tice. The notice may contain any other information
24 specified in regulations established by the Register
25 of Copyrights pursuant to this section.

1 “(ii) If a restored work has no formal title, it
2 shall be described in the notice of intent in detail
3 sufficient to aid in its identification. Minor errors or
4 omissions may be corrected after the period estab-
5 lished in subsection (d)(2)(A) and shall be published
6 by the Register of Copyrights in the Federal Reg-
7 ister pursuant to subparagraph (B).

8 “(B)(i) The Register of Copyrights shall publish
9 in the Federal Register, commencing not later than
10 4 months after the date of the Agreement on Trade-
11 Related Aspects of Intellectual Property of the Gen-
12 eral Agreement on Tariffs and Trade becomes effec-
13 tive with respect to the United States and every 4
14 months thereafter, lists identifying restored works
15 and the ownership thereof if a notice of intent to en-
16 force a restored work has been filed.

17 “(ii) Not less than 1 list containing all notices
18 of intent to enforce a restored work filed with the
19 Copyright Office shall be maintained in the Public
20 Information Office of the Copyright Office and shall
21 be available for inspection and copying during regu-
22 lar business hours pursuant to sections 705 and
23 708.

24 “(C) The Register of Copyrights is authorized
25 to fix reasonable fees based on the costs of receipt,

1 processing, recording, and publication of notices of
2 intent to enforce a restored work.

3 “(D)(i) Not later than 30 days after the date
4 the Agreement on Trade-Related Aspects of Intellec-
5 tual Property of the General Agreement on Tariffs
6 and Trade becomes effective with respect to the
7 United States, the Copyright Office shall establish
8 and publish in the Federal Register regulations gov-
9 erning the filing under this subsection of notices of
10 intent to enforce a restored work.

11 “(ii) Such regulations shall permit owners of re-
12 stored works to simultaneously obtain registration
13 for a claim of copyright in the restored work.

14 “(2) NOTICES OF INTENT SERVED ON A RELI-
15 ANCE PARTY.—

16 “(A) Notices of the intent to enforce a re-
17 stored work may be served by the copyright
18 owner of the restored work or by the owner of
19 any exclusive right therein on a reliance party.

20 “(B) Such notice shall identify the restored
21 work and the use to which the owner objects
22 and shall include an address and telephone
23 number at which the reliance party may contact
24 the owner.

1 “(f) IMMUNITY FROM WARRANTY AND RELATED LI-
2 ABILITY.—An individual who warranted, promised, or
3 guaranteed that a work that such individual created did
4 not violate 1 of the exclusive rights granted in section 106,
5 shall not be liable for legal, equitable, arbitral, or adminis-
6 trative relief if the warranty, promise, or guarantee is
7 breached by virtue of the restoration of copyright under
8 this section.

9 “(g) DEFINITIONS.—For purposes of this section and
10 section 109(a):

11 “(1) The term ‘date of adherence’ means the
12 earlier of the dates upon which a foreign country
13 that is not a member of the Berne Union or the
14 World Trade Organization, as of the date of the en-
15 actment of the General Agreement on Tariffs and
16 Trade Intellectual Property Act of 1994, becomes a
17 member of the Berne Union or the World Trade Or-
18 ganization.

19 “(2) The term ‘date of restoration’ of a re-
20 stored copyright means—

21 “(A) the date the Agreement on Trade-Re-
22 lated Aspects of Intellectual Property of the
23 General Agreement on Tariffs and Trade be-
24 comes effective with respect to the United

1 States, if the work is a restored work on such
2 date; or

3 “(B) the date of adherence.

4 “(3) The term ‘eligible country’ means a coun-
5 try, other than the United States, which, on the date
6 that copyright is restored under the provisions of
7 this section, has joined the World Trade Organiza-
8 tion or adhered to the Berne Convention for the
9 Protection of Literary and Artistic Works.

10 “(4) The term ‘reliance party’ means any per-
11 son who, prior to the date the Agreement on Trade-
12 Related Aspects of Intellectual Property of the Gen-
13 eral Agreement on Tariffs and Trade becomes effec-
14 tive with respect to the United States, or who, prior
15 to the date of adherence of a source country which
16 became an eligible country after the date of the en-
17 actment of such Act—

18 “(A) engaged in acts which would have vio-
19 lated section 106 if the restored work had been
20 subject to copyright protection, and who, after
21 the date the Agreement on Trade-Related As-
22 pects of Intellectual Property of the General
23 Agreement on Tariffs and Trade becomes effec-
24 tive with respect to the United States, or after

1 the date of adherence, continued to engage in
2 such acts; or

3 “(B) made substantial monetary invest-
4 ments in a creation of a work which incor-
5 porates material portions of a restored work.

6 “(5) The term ‘restored work’ means an origi-
7 nal work of authorship that—

8 “(A) is protected under subsection (a);

9 “(B) is not in the public domain in its
10 source country;

11 “(C) is in the public domain in the United
12 States due to—

13 “(i) noncompliance with formalities
14 imposed at any time by United States
15 copyright law, including failure of renewal,
16 lack of proper notice, or failure to comply
17 with any manufacturing requirement; or

18 “(ii) lack of subject matter protection
19 in the case of sound recordings fixed before
20 February 15, 1972; and

21 “(D) has not less than 1 author who was,
22 at the time the work was created, a national or
23 domiciliary of an eligible country, and if pub-
24 lished, was first published in an eligible country
25 but not published in the United States during

1 the 30-day period following publication in such
2 eligible country.

3 “(6) The term ‘source country’ of a restored
4 work means—

5 “(A) a country other than the United
6 States;

7 “(B) in the case of an unpublished work—

8 “(i) the eligible country in which the
9 author is a national or domiciliary, or, if a
10 restored work has more than 1 author, the
11 majority of foreign authors are nationals
12 or domiciliaries of such eligible countries;
13 or

14 “(ii) if the majority of authors are not
15 foreign, the source country shall be the
16 country, other than the United States,
17 which has the most significant contacts
18 with the work; and

19 “(C) in the case of a published work, the
20 eligible country in which the work is first pub-
21 lished, or if the restored work is published on
22 the same day in 2 or more eligible countries,
23 the source country shall be the country, other
24 than the United States, which has the most sig-
25 nificant contacts with the work.”.

1 (b) LIMITATION.—Section 109(a) of title 17, United
2 States Code, is amended by adding at the end the follow-
3 ing:
4 “(e) the sale or other disposition without the author-
5 ization of the owner of a restored work of copies or
6 phonorecords manufactured before the date of restoration
7 of works in which copyright has been restored under sec-
8 tion 104A may be sold or otherwise disposed of only dur-
9 ing the period specified in section 104A(d)(3), and after
10 such period, only as part of a sale or disposition of not
11 more than 1 copy or phonorecord at a time.”.

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HR 4894 IH——2